

UNITED STATES ENVIRONMENTAL PROTECTION AGENCY
REGION 5
77 WEST JACKSON BOULEVARD
CHICAGO, IL 60604-3590

REPLY TO THE ATTENTION OF:
WS-15J

MEMORANDUM

DATE: December 20, 2001

SUBJECT: EPA Review of Fond du Lac Band Water Quality Standards - Is There a
Need for a Consistency Review Pursuant to the Coastal Zone Management Act

FROM: Bob Newport *Bob Newport*
Program Manager, State and Tribal Programs Branch

TO: Kathleen Mayo
Life Scientist, Water Quality Branch

The purpose of this memo is to provide information on if as part of EPA's review and decision-making on the Fond du Lac Band's Water Quality Standards (WQS), a consistency review is required pursuant to the Coastal Zone Management Act (CZMA).

Background

The requirement for consistency reviews is found in Section 307(c) of the CZMA. The Act requires that a Federal action that is reasonably likely to affect any land or water use or natural resource of the coastal zone be consistent with the enforceable policies of a coastal State's or territory's Federally approved coastal management program. Federal actions include activities to carry out functions of a Federal agency in the exercise of its statutory responsibilities. The objective is to ensure that Federal agencies and applicants for Federal approvals or funding adequately consider and comply with State coastal zone protection provisions.

Applicability to EPA Review and Approval/Disapproval of the Fond du Lac WQS

If EPA determines the Band's Water Quality Standards have designated uses and criteria that meet applicable requirements of the Clean Water Act and its implementing regulations (40 CFR Part 131 and 132), a separate consistency review is not required. The criteria being used to review and approve the Band's WQS are the same as the criteria used to review and approve the State's WQS. An Agency determination that a State or Tribe's WQS meet the requirements of the CWA would mean the standards are inherently consistent with the enforceable water quality policies of the State.

Furthermore, the Band's WQS would have no spillover impacts on waters of the State of Minnesota. Pursuant to NOAA regulations (15 CFR 923.33) and the State's Coastal Zone

Management Plan, the Fond du Lac Reservation is excluded from the coastal zone area except for spillover impacts that affect the coastal zone. Waters that flow off the Reservation and thereby fall under State jurisdiction are required to meet the State's WQS beginning at the Reservation boundary. Any action that might be taken on the Reservation (e.g., a NPDES permit for a new point source discharge) would need to be planned and carried out such that it meets the Tribe's WQS on the Reservation and the State's WQS beginning at the Reservation boundary. Therefore there are no spillover impacts resulting from the WQS approval action, and therefore the action does not need to undergo a consistency review.

If you have any questions regarding the points made in this memorandum, please contact me.

cc: Rodger Field, Office of Regional Counsel